



The City of Burlingame

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February 28, 2008

Mr. Bruce Wolfe
Executive Officer
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Subject: City of Burlingame's Comments on the Tentative Order for the Municipal Regional Stormwater National Pollutant Discharge Elimination System Permit

Dear Mr. Wolfe:

The City of Burlingame appreciates this opportunity to comment on the Tentative Order for the Municipal Regional Stormwater NPDES permit MRP. The City of Burlingame is a co-permittee of the San Mateo Countywide Clean Water Pollution Program (SMCWPPP). Since the first countywide stormwater NPDES permit was issued in the early 1990s the City has been proactive in implementing water quality improvements by carrying out specific performance standards developed by the program to prevent and control stormwater pollution. The City continues to support water quality improvements and believes the development of a uniform and integrated stormwater permit is essential in solving water quality problems. The draft permit clearly aims to solve water quality problems and we support this. However, we are concerned that the permit lacks prioritization in carrying out the expansive program elements and associated activities and appears to imply that each co-permittee would be able to comply without regard to the potential impacts they may have on the current and limited city resources. It is becoming more evident that the current state fiscal deficit will significantly impact local municipalities and cutbacks would need to be reprioritized to balance and meet the ongoing needs of local programs. We are also concerned about the lack of flexibility for implementing these enhanced program elements. These are similar to concerns raised by SMCWPPP and the Bay Area Stormwater Management Agencies Association (BASMAA). While this letter lists our primary concerns, we concur and support the collective efforts undertaken and comments submitted by SMCWPPP and BASMAA. This letter provides our immediate concerns on the 190-page Tentative Order for the Municipal Regional Permit.

Following are our concerns and suggestions:

1. The draft permit proposes to enhance and add new program activities in Provision C.2

Municipal Operations. The City suggests the following solutions to these new requirements to provide flexibility and facilitate implementation.

- C.2.d should be modified to allow wash water discharge to storm drains during sidewalk and plaza maintenance if BASMAA's BMPs for Mobile Surface Cleaner Program are implemented. BASMAA has successfully provided this program to mobile surface cleaner businesses as an accepted stormwater BMP. Prohibiting municipal maintenance staff from the accepted practice senselessly wastes city resources.
- C.2.f should be modified to require ONLY that municipalities inspect and clean inlets that they own or operate. Municipal staff should not be required to clean inlets located on private properties due to liability exposure. Additionally, program activities under this provision should allow added flexibility by allowing staff to determine the frequency of cleaning inlets with high accumulations of litter and trash and determine alternatives to address them that are both consistent with the provisions in C.10.a. The suggested solutions allow for efficient use of city staff time and resources.
- C.2.g should be less prescriptive and be modified to require ONLY that municipalities inspect stormwater pump stations that they own or operate. Furthermore, the requirement of collecting the amount of volume or mass of material removed from a particular pump station after or within 24 hours of significant storm event should be deleted. This type of data collection is unnecessary and burdensome especially when this type of event often requires staff to concentrate on more important tasks, i.e. ensuring pumps are working properly, maintaining brush bar, flooding issues, etc. The City suggests that data collection of materials removed from the pump stations should be limited during the prescribed frequency of maintenance and inspection for stormwater pump stations under this provision.
- The level of specificity in C.5.d should be deleted. It duplicates many of the efforts already listed in Provision C.2. For example, the requirement to survey at least 1 system check point per square mile once per year does not appear to use the same strategy used in street sweeping, where the municipality is allowed to prioritize areas based on needs. The City recommends that this type of prioritization be applied to this type of screening activities to promote effective use of city resources. The permit should also allow municipalities to use video inspections of storm drains as an alternative means to screen for illicit discharge but it should not be a mandatory permit requirement as this type of surveillance is not "above ground check points." Additionally, video equipment used for sanitary sewer cannot be used to survey storm drain and must be budgeted and purchased separately.
- The draft's permit's requirement to increase tracking and reporting and creation of a separate database in Provision C.5.e is similar to what has been proposed in Provision C.5.c. The permit should be revised to allow the City to use a system that is equivalent or use an existing system that already meets or would meet reporting requirements in both provisions C.5.c. and C.5.e.
- Provision C.7.a. requires a municipality to perform storm drain inlet markings on all privately maintained streets not marked upon construction. This requirement should be modified, as storm drain inlet marking on private property not marked upon construction could be a time-extensive undertaking. The City will continue to provide storm drain stenciling outreach program and lend storm drain stencils to private property owners on a voluntary basis.
- The impacts to municipal operation staff attributed to the requirements for implementing Provision C.10., Trash Reduction, also raise concerns for the City. This provision requires municipalities to implement a pilot trash control program. This program would require municipalities to implement enhanced trash reduction measures in 10% of urban area under their jurisdiction AND install full capture treatment devices in at least 5% of urban area even if enhanced measures have been implemented. The cost to implement enhanced measures could potentially be absorbed through enhancements of regular municipal maintenance activities. However, the purchasing, installing and maintaining full capture devices is a significant fiscal challenge. It should be noted that while there is no certification process yet for "full capture" devices, the permit specifies that

these devices should be able to filter and trap litter and trash as small as 5 millimeters in diameter. While this provision further requires municipal maintenance of these devices during periods of rain events to minimize ponding and localized flooding, these devices could add more costs to municipalities in terms of staff time and resources in addition to safety and liability issues.

- The City recommends the required activities under this provision be scaled back and or alternate methods of removal of trash should be examined. The City agrees that trash and litter do not belong in the waterways and believes that measurable and cost-effective solutions exist. A workable solution has been proposed by SMCWPPP. This method allows municipalities to select a high trash area catchment in its jurisdiction, propose a list of solutions that are feasible and appropriate for that area, choose the best solution or solutions, implement them and provide for measurable reduction in trash. Focusing and testing this alternative solution first on a manageable (smaller) area before applying a pilot trash control program on a bigger area allows municipalities to comply with this requirement in a way that could yield desirable and measurable results within fiscal constraints and scope and help secure future dedicated funding. Failure at a grander scale may have an opposite and possibly irreversible effect.

2. The draft permit proposes to expand existing C.3 requirements on New Development and Redevelopment. As with many municipalities, sufficient time and effort are already required to implement existing requirements. Data has been submitted to the Regional Board on projects that have added, created and or replaced 1 acre of impervious surface, and more recently on projects that add, create and or replace 10,000 square feet. Permittees are just now gaining experience in implementing current C.3 requirements and the water quality benefits from these requirements are still unknown. To date there has been no formal evaluation by the Board staff to analyze the effectiveness of these BMPs which would justify the proposed changes.

- In C.3.b regulated projects requiring the installation of a stormwater treatment system should remain at 10,000 square feet as opposed to 5,000 square feet. Inclusion of adequate site design and source control measures could provide significant opportunities to reduce the discharge of pollutants in stormwater runoff to the point where treatment is not necessary. The City is built out and projects of this size are typically infill projects. Furthermore, it is not known if installation of a stormwater treatment system in the 5,000 square foot size threshold would result in additional significant water quality improvement.

- Stormwater treatment should remain excluded for sidewalks, bicycle lanes, trails, bridge accessories, guardrails, and landscape features (C.3.b.i. (4)) and rehabilitation of arterial streets or roads (C.3.b.i. (5)). Sidewalks, bicycle lanes, trails, etc encourage other modes of transportation. Space limitations may prohibit the installation of a stormwater treatment system on arterial streets or roads, especially when both sides of the right-of-way are developed.

- Provision C.3.i requires detached single-family home projects that create and/or replace 5,000 square feet or more of impervious surface to implement one or more stormwater lot-scale BMPs from a list of three (3) choices. The permit should provide more flexibility and allow this type of project to propose alternatives that are deemed appropriate to the site.

- The data collection and reporting requirement (C.3.b. (5).iii) for regulated projects and for impervious surface data for small projects (C.3.j) should be minimized to lessen the administrative burden.

3. The draft permit includes expansive new water quality monitoring requirements (C.8) and enhanced management measures to address pollutants of concern (C.10 thru C.14). While we support the development of focused studies to improve water quality we express a list of concerns on the following requirements:

- The proposed requirements require significant allocation of existing and finite program funds. According to SMCWPPP, compliance tasks associated with these provisions would take up two-thirds of the existing budget in FY 08-09. Furthermore, for FY 09-10 associated costs would increase by 2-fold in monitoring, triple in mercury control and quadruple in PCBs controls. The percent increase over current program costs to implement all provisions in the permit increases by 65% in the first year and 123% by the second year. SMCWPPP has yet to identify a solution to increase the program budget to meet the proposed costly requirements. This is also a challenge facing many municipalities. The permit should scale back or reprioritize existing monitoring requirements until the programs identify a dedicated source of funding to offset the increased costs.
- Many of the activities required are beyond the scope of the municipalities. For example, abatement of PCBs and mercury on non-municipal owned property is an oversight done by a state agency. The amount of copper in brake pads is also beyond the control authority of the program and co-permittees. The permit should identify a more reasonable, cost-effective and sensible method to address these pollutants and improve water quality while recognizing the finite resources of stormwater programs and its co-permittees.
- Characterizing possible stormwater pump station problems first should be the focus of this permit cycle. The permit's requirement to conduct the feasibility of diverting stormwater pump station dry weather and first flush flows to the sanitary sewer to be treated by local Publicly Owned Treatment Works (POTWs) highly suggests that it is the preferred solution to a problem without first exploring or providing flexibility that other viable options exist. The permit also suggests that stormwater diversion to the treatment plant is simple. A robust dialogue between stormwater and local POTW agencies must take place in order to develop a coordinated and agreed-upon work plan to address complex and unknown issues (such a funding and permitting related concerns) arising from this ambitious task.

4. Provision C.15 in the draft permit addresses exempted and conditionally exempted discharges. The requirements and associated tasks are overly prescriptive and detailed. We agree and concur with the many issues brought up by SMCWPPP and BASMAA and we again emphasize those concerns below.

- The permit requirements to address every discharge of pumped groundwater, foundation drain, water from crawl space pumps, and footing drains should be modified to conserve city resources and limit oversight to those activities that pose greater impacts to receiving water. The associated discharge monitoring and testing requirements are overly prescriptive and require additional city resources to implement and oversee. As suggested by the program, discharges from these sources should be implemented through the use of appropriate BMPs similar to what was done in the 2004 permit amendment. For discharges that exceed 10,000 gallon per day, the discharger should obtain a separate permit from the Regional Board.
- The permit should modify the reporting and monitoring requirements listed under Provision C.15.b.iii. Local municipalities should not be given the oversight responsibility for planned, unplanned and emergency discharges associated with dischargers (such as large water utilities) that is not under their jurisdiction. The permit should not place the burden on local municipalities for documenting the associated notification, reporting and monitoring requirements associated with this discharge. The permit should instead allow municipalities to obtain copies of the associated reporting and monitoring requirements (or an equivalent form chosen by the discharger) for annual documentation and reporting purposes only. The permit should also consider adopting a General permit to address these types of dischargers to promote formalize requirements, improve consistency and ensure equitable use of limited local funding.

5. A common theme in the draft permit is the excessive data collection and reporting requirements. The reporting template issued under this permit (Appendix L) is over 100 pages and does not even include the countless supplemental reporting tables required by

some of the permit provisions. The City believes a streamlined reporting and recordkeeping is essential to conserve staff resources which should be used instead to comply with all the pollution prevention activities specified in this permit. The City agrees and concurs with the recommendations submitted by SMCWPPP which are listed below.

- The reporting form should be developed following the adoption of the permit so that it reflects what has been included in the permit as adopted. The inclusion of the form with the permit also sends the wrong message to municipalities and stakeholders that the contents of the permit have already been decided, regardless of the comments submitted on the Tentative Order. If the Water Board is resolved to include a reporting form as part of the adopted permit, the reporting form needs to be pared down to about 10 to 20 pages of essential information. The completion of the proposed, lengthy Report Form would require a wasteful use of limited municipal staff resources on reporting and record keeping. One recommendation for making the reporting more manageable would be to have a different reporting form for each year of the permit with each annual report reporting form focused on just one area of the permit so that the entire permit is reported on once over a five-year period. Another recommendation would be to decrease the enormous amount of overly detailed information that is required in the reporting.

Lastly, the permit does not take into effect the substantial funding commitment that is required to implement the expanded program elements contained in the draft permit. The Water Board should recognize that municipalities need a way to fund significant, new, Permit requirements. This is particularly important given the current difficult financial times and lack of available funds that could be diverted from existing stormwater tasks to new stormwater tasks or from other existing municipal budget priorities to stormwater. The Water Board should recognize that municipalities need an opportunity to successfully achieve permit compliance.

The potential funding sources that do not require voter approval are limited and unlikely to provide a substantial fraction of the funds needed to implement the permit. It is likely that the proposed Permit provisions requiring significant additional expenditure would need voter approval, such as a bond fund to pay for capital projects and/or a tax or assessment to pay for long-term maintenance. For example, the Fact Sheet reports that the Los Angeles and City of Oakland trash capture device installations were funded in large part through voter-approved bond measures.

Municipalities need time to develop financial plans, educate property owners and/or voters on the need for additional funding, attempt to secure voter approval of bonds and/or additional taxes and assessments, and, if successful, start to collect sufficient funds to undertake the projects needed to comply with the permit. The permit's compliance dates should be adjusted to provide at least a five year period to attempt to secure and accrue the necessary revenue to meet significant new permit requirements.

We appreciate your consideration of our comments.

Sincerely,



Art Morimoto
Assistant Director of Public Works

cc: Syed Murtuza
Eva Justimbaste
BASMAA
Matt Fabry - San Mateo County NPDES Program Coordinator